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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,253	12/03/2003	Rudolfus Johannes Hendrikus Hafkamp	C4271(C)	4915
201	7590	09/14/2004	EXAMINER	
UNILEVER PATENT DEPARTMENT 45 RIVER ROAD EDGEWATER, NJ 07020			DOUYON, LORNA M	
			ART UNIT	PAPER NUMBER
			1751	

DATE MAILED: 09/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/727,253

Applicant(s)

HAFKAMP ET AL.

Examiner

Lorna M. Douyon

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3 pages.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Claim Rejections - 35 USC § 112

1. Claims 3, 7, 11-12, 16-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 3, 7, 16-18 are indefinite because it is not clear whether the limitations inside the parentheses are part of the claims' limitations or not. In addition, in claim 18, "laundry" in line 1 lacks support with respect to claim 17. Also, the dependency of claim 18 is incorrect, the present claim does not recite the alkylpolyglycoside present in claim 17. Shouldn't this claim depend from claim 16?

In claims 11-12, "the surfactant" in line 2 of each claim lacks support with respect to claim 1.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 4, 14 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 61275207, hereinafter "JP '207".

JP '207 teaches clay, for beauty and health, which comprises an aloe (see abstract) and contains no enzyme. Even though JP '207 does not explicitly disclose the pH of the composition in a 1 wt% aqueous solution and the bulk density of the composition, it would be inherent for the

Art Unit: 1751

composition of JP '207 to inherently possess the recited characteristics because same ingredients have been utilized. Hence, JP '207 anticipates the claims.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 3, 7, 8 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP '207 as applied to the above claims.

JP '207 teaches the features as described above, JP '207, however, fails to specifically disclose the amount of the aloe and clay as those recited.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to optimize the proportions of the aloe and clay of JP '207 through routine experimentation for best results. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the *prima facie* case of obviousness. See *In re Boesch*, 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980). See also *In re Woodruff*, 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

7. Claims 5, 6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP '207 as applied to the above claims, and further in view of Tokubo et al. (US Patent No. 5,165,915), hereinafter "Tokubo".

JP '207 teaches the features as described above. JP '207, however, fails to disclose a colorant for the clay composition, in particular, green colorant and a polymeric binder.

Tokubo teaches a similar clay powder for use in cosmetics (see abstract, col. 1, lines 10-18), which comprises an organic substance like water soluble polymers to provide moist feeling during use (see col. 3, lines 12-18, col. 10, line 22) and an oil-soluble dye which provides an excellent light resistance and coloration power (see col. 3, lines 16-18).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate a water soluble polymer or a colorant to the clay composition of JP '207 because such polymer or colorant will provide moist feeling during use or an excellent light

Art Unit: 1751

resistance and coloration power, respectively, as taught by Tokubo and to use a green colorant because the selection of a specific colorant is within the level of ordinary skill in the art.

Double Patenting

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claims 1-19 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-21 of copending Application No. 10/353,725. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are drawn to similar particulate detergent compositions comprising similar ingredients differing only in that the present claims require a clay carrier whereas the copending application recites a generic inorganic carrier, The clay carrier, however, is a species of the generic inorganic carrier.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Art Unit: 1751

10. Claims 16-18 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 12-14 of copending Application No. 10/353,724. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are drawn to similar detergent compositions comprising similar ingredients differing only in that the granules comprising aloe vera of the present claims are derived from an aqueous solution of the herbal extract absorbed into and/or adsorbed onto the carrier, whereas the copending application does not require the derivation of aloe vera. The resulting products of both sets of claims, however, are similar.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references are considered cumulative to or less material than those discussed above.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is (571) 272-1313. The examiner can normally be reached on Mondays-Fridays from 8:00AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1751

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Lorna M. Douyon

Lorna M. Douyon
Primary Examiner
Art Unit 1751